Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-6108

EMMA ARMOUR, *et al.*,

Appellants,

v.

JACK P. NIX, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION TO AFFIRM BY THE ATLANTA BOARD OF EDUCATION

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MOTION TO AFFIRM

Appellee The Atlanta Board of Education, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves that the final judgment dated September 24, 1979 of the three-judge District Court dismissing the above action be affirmed on the grounds that the decision of the Court below is clearly correct and does not warrant further argument.

STATEMENT

The motions to affirm filed by the other Appellees in this case have fully set forth the facts and the statutes involved. Those matters need not be repeated herein.

DISCUSSION

The motions to affirm filed by the other Appellees in this case also set forth more than adequate legal bases upon which the decision of the trial court should be affirmed without further review by this Court. Rather than burdening the Court with a restatement of the legal arguments set forth in the motions to affirm of the other Appellees, the Atlanta Board of Education expressly adopts and incorporates herein by reference the motions to affirm and arguments of the other Appellees with the same force and effect as if set forth fully herein and repeated. However, the Atlanta Board of Education would like to take this opportunity to apprise the Court of certain facts and procedural history peculiar to it and on account of which the decision of the three-judge panel in this case should be affirmed.

The Atlanta Public School System was first created in 1869 and has throughout its history provided public education to persons residing within the City of Atlanta. As the city limits of Atlanta have expanded throughout that period, so too have the educational jurisdictional limits of the Atlanta Public School System such that at all times the educational jurisdiction of the Atlanta Public School System and the city limits of Atlanta have been coterminous.

In 1958, shortly following the decision of this Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), litigation was begun against the Atlanta Board of Education for the purpose of desegregating the Atlanta Public School System. During the following twenty-year period, the Atlanta Public School System has been embroiled in litigation of one form or another—either its own intra-district case which ended in 1976 with the United States

Court of Appeals for the Fifth Circuit denying a Motion by the same Plaintiffs for a rehearing of its earlier decision declaring the Atlanta School District to be unitary and purged of all vestiges of the formerly state imposed dual system or this multi-district case. *See Calhoun v. Cook*, 522 F.2d 717 (5th Cir. 1975), *rehearing denied*, 525 F.2d 1203 (1976).

During the period of these suits, the Atlanta Public School System has evolved from one with a pupil ratio of approximately 70% white and 30% black in 1958, to one which in 1974 (when the trial court in *Calhoun v. Cook* found the System to be unitary) was 15% white and 85% black, to its present state of 11% white and 89% black. From a peak enrollment of approximately 115,000 students, the System has gradually lost student enrollment bringing it to its present enrollment of approximately 75,000 students. The administration and staff have experienced a similar racial inversion from predominately white to a ratio of approximately 75% black and 25% white. A majority black school board chaired by Dr. Benjamin E. Mays, a respected black educator and civil rights leader, now oversees the operations of the Atlanta Public School System.

The history of the school desegregation litigation within the Atlanta Public School System becomes significant when one recognizes that the Atlanta Public School System, the city system in which Plaintiffs were alleged to reside and whose schools their children were alleged to attend in their original Complaint, was on May 1, 1974 "for the fourth time in as many years" held by the District Court to be unitary, to wit: "The Court concludes that the Atlanta School District is unitary and has purged itself of all vestiges of the formerly state im-

posed dual system." The District Court's determination was affirmed by the United States Court of Appeals for the Fifth Circuit which similarly concluded that the City of Atlanta School System "is free of racial discrimination and it wears no proscribed badge of the past." *See Calhoun v. Cook*, 522 F.2d 717 (5th Cir. 1975), *rehearing denied*, 525 F.2d 1203 (1976).

This Court held in *Milliken v. Bradley*, 418 U.S. 717 (1974) that the constitutional right of the Plaintiffs in this litigation is to attend a unitary school system in the district in which they reside; i.e., Atlanta. *Id.* at 746. Since the Plaintiffs in this case are being afforded their constitutional right to attend a unitary school system in the school district in which they reside, their claims for relief must necessarily fail. Hence, this one critical fact distinguishes the instant case from all the other "metro" cases to have reached this Court in which an interdistrict remedy was ordered. In all of those cases, the core urban school district within which the Plaintiffs resided had been judicially found to be non-unitary and racially discriminatory—thereby depriving the Plaintiffs of the "equal rights" secured to them under the Fourteenth Amendment and this Court's decision in *Brown v. Board of Education, supra. See Milliken v. Bradley*, 418 U.S. 717, 725-26 (1974) (*relief denied*); *Bradley v. School Board of City of Richmond, Virginia*, 338 F.Supp. 67, 72 (E.D. Va. 1972), *rev'd* 462 F.2d 1058, 1061 (4th Cir. 1972), *aff'd by equally divided court*, 412 U.S. 92 (1973) (*relief denied*); *Evans v. Buchanan*, 393 F.Supp. 428, 430 (D. Del. 1975), *aff'd* 423 U.S. 963 (1975) (*relief granted*); *Newburg Area Council, Inc. v. Board of Education*, 510 F.2d 1358, 1359 (6th Cir. 1974), *cert. denied*, 421 U.S. 931 (1975) (*relief granted*).

As mentioned earlier herein, the City of Atlanta School System has been judicially declared to be unitary and purged of all vestiges of past discrimination. Furthermore, Plaintiffs at trial offered no evidence that any of the other ten Defendant county and city school systems was operating in a non-unitary or racially discriminatory manner. There is, in other words, no evidence that any Plaintiff is attending school in a school system which is not unitary and free of racial discrimination.

For this reason alone, Appellees were entitled to Judgment in their favor and the decision of the trial court should be affirmed. Since Appellants have neither alleged nor proven that there has been any change within the Atlanta Public School System since it was declared to be unitary so as to render it a dual school system today, Appellants have shown no constitutional violation within the Atlanta Public School System so as to entitle them to any relief whatsoever under the prior decisions of this Court. Therefore, the decisions which Plaintiffs attempt to raise in this appeal are so unsubstantial as not to need further argument and the decision of the trial court should be affirmed.

The Atlanta Board of Education has been embroiled in desegreation litigation for over twenty years now. As expressed by Dr. Benjamin E. Mays, its President, in testifying upon the trial of this case, the Atlanta Public School System has within its own jurisdiction the resources, both financial and otherwise, to provide and it is in fact providing its citizens with a quality education. This Court has never held nor can the Atlanta Board of Education accept the proposition that a majority black school system cannot constitutionally be allowed to exist. In fact, to accept Plaintiffs' central notion that quality

education cannot be provided within a majority black school system even where the system has one of the highest per-pupil expenditures within the state and which is administered by black school officials subject to predominately black electoral control in a majority black city is to acknowledge certain inferiorities of the black race itself. It is this very concept (i.e., that even under such favorable circumstances a black child cannot learn unless he sits next to a white child in school) with which Dr. Benjamin E. Mays vehemently disagreed in his testimony at trial, which the trial court rejected in dismissing Appellants' Complaint in this action, and which Appellees ask this Court to expressly reject.

Since Appellants have shown no constitutional violation by the Atlanta Board of Education or any of the other Appellees in this case, the decision of the trial court in this case was correct and should be affirmed. The Atlanta Board of Education respectfully prays that this Court affirm the decision of the trial court in this case and allow it to devote its full time and attention to its task of providing quality educational services to its citizens.

CONCLUSION

For the reasons stated herein, this appeal should be affirmed without the need for further briefing on the merits or oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served three copies of the within and foregoing MOTION TO AFFIRM upon counsel of record by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to:

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This ____ day of _____, 1980.

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